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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,837	11/20/2003	Kendrew George Elliott	ADAM-24-107	8551

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EXAMINER

MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,837

Applicant(s)

ELLIOTT, KENDREW GEORGE

Examiner

Kelly Mahafkey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-10,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/24/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-3, 5-10, 12, and 13 are pending.

Specification

The disclosure is objected to because of the following informalities: Page 6, line 5 of the specification designates reference numeral 10 as the food package, however page 6 line 4 of the specification designates the food package as reference numeral 60, and page 5 lines 4-5 designate reference numeral 10 as the wrapper strap.

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Reference numbers 46 and 48 are not mentioned in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to which of the three statutory classes (a product, a method of making, or a method of using) of invention, which this claim falls under. The claim appears to recite a product (i.e. a sandwich as presented to the user) as well as a method of using (i.e. removal of the sandwich wrapper and use of said wrapper).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (US 1896601).

Andrews teaches of a wrapper-strap for a two pieces of bread with material in-between (i.e. a sandwich), the wrapper-strap being of elongate foldable sheet material (i.e. box board-Page 1 lines 60-65), the wrapper-strap having first and second fastening formations towards opposed ends (Figure 7- first fastening form: items 16 and 17, second fastening form: item 12) thereof to permit the wrapper-strap to be fitted snugly belt-fashion around the sandwich, by fastening the two fastening formations together

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and a transverse fold line (Figure 7- item 20) positioned midway between the associated fastening formation and a centre line of the wrapper-strap. Note: Andrews reference Figure 7, the left most item 20 appears to be in the center of the left fastening formation (items 16-17) and the centre of the wrapper strap. Andrews teaches that the first fastening formation includes a plurality of longitudinally spaced parallel slits all of which extend partly across the width of the wrapper-strap and open out of one side of the wrapper-strap, and wherein the second fastening formation includes a plurality of longitudinally spaced parallel slits all of which extend partly across the width of the wrapper-strap and open out of the opposing side of the wrapper-strap, thereby to permit the ends of the wrapper-strap to be fastened together by the slits inter-engaging saddle-fashion to accommodate sandwiches of different sizes. Refer specifically to Figure 7 and Page 1, Column 2.

Andrews, however, is silent to a transverse fold line corresponding to each fastening formation as recited in claims 1 and 5.

Regarding a transverse fold line corresponding to each fastening formation, Andrews teaches of fold lines for the purpose of bending the wrapper-strap around the sandwich (Page 1 lines 82-84). It would have been an obvious to one of ordinary skill in the art to include an amount of fold lines, at a particular distance away from the fastening formation, depending on the sandwich to be enclosed by the wrapper-strap (i.e. a square shaped sandwich would require a wrapper strap with fold lines in different locations than a square sandwich in order to conform to the sandwich and a round shaped sandwich would require a different amount of fold lines than a square

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sandwich). To chose an specific amount fold lines, and their corresponding locations on the wrapper-strap would have been an obvious design choice and does not provide a patentable distinction to the claims, pending an convincing arguments or evidence to the contrary.

Claims 1, 6-10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews (WO 03/010049).

Mathews teaches of a wrapper-strap for hamburgers and sandwiches, the wrapper-strap being of elongate foldable sheet material (Abstract and Page 5 lines 15-20), the wrapper-strap having first and second fastening formations towards opposed ends (Figure 2- first fastening form: items 14 and 15, second fastening form: items 16 and 17) thereof to permit the wrapper-strap to be fitted snugly belt-fashion around the sandwich, by fastening the two fastening formations together. Mathews teaches that the wrapper-strap can include a panel on which signage or indicia are provided (Page 8 lines 8-11). Mathews teaches, Figures 1 and 3, that the wrapper-strap has a width that substantially matches the thickness of the sandwich it encloses. Mathews teaches that upon receiving the a sandwich enclosed by the wrapper strap, the user can remove a portion of the strap and use it to prevent the filling of the sandwich from passing the opening created between layers of the sandwich opposite the bite side of the sandwich (Refer specifically to Page 6 lines 10-27 and Figure 3).

Mathews, however, is silent to a transverse fold line corresponding to each fastening formation positioned midway between the fastening formation and the centre

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of the wrapper-strap as recited in claims 1 and 13, the exact width of the wrapper-strap as recited in claims 6 and 7 (not greater than 6 cm or 53.5 mm), the location of the information panel on the wrapper strap as recited in claim 8.

Regarding a transverse fold line corresponding to each fastening formation positioned midway between the fastening formation and the centre of the wrapper-strap as recited in claims 1 and 13, it would have been an obvious to one of ordinary skill in the art to include an amount of fold lines, at a particular distance away from the fastening formation, depending on the sandwich to be enclosed by the wrapper-strap (i.e. a square shaped sandwich would require a wrapper strap with fold lines in different locations than a square sandwich in order to conform to the sandwich and a round shaped sandwich would require a different amount of fold lines than a square sandwich). To chose an specific amount fold lines, and their corresponding locations on the wrapper-strap would have been an obvious design choice and does not provide a patentable distinction to the claims, pending an convincing arguments or evidence to the contrary. Furthermore, it is noted that the fold lines do not have a claimed distinguishing feature (i.e. perforations, ect). As such, a flexible material bent around a sandwich, such as the one taught by Mathews, would posses fold lines such as the ones claimed.

Regarding an exact width of the wrapper-strap as recited in claims 6 and 7, Mathews teaches that the wrapper-strap has a width that substantially matches the thickness of the sandwich it encloses. Mathews also teaches that the wrapper strap can be utilized to prevent the filling inside the sandwich from coming out. It would have

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been obvious to one of ordinary skill in the art, at the time the invention was made, to adjust the width of the wrapper-strap, so that it would substantially matches the thickness of the sandwich it encloses, and prevent the filling inside the sandwich from coming out. It is noted that the exact width of the wrapper strap would be an obvious choice, to one of ordinary skill in the art, based upon the sandwich to be wrapped.

Regarding the location of the information panel on the wrapper strap as recited in claim 8, Mathews teaches that the wrapper-strap can include a panel on which signage or indicia are provided (Page 8 lines 8-11). Mathews, Figures 2 and 8, also teaches that the wrapper strap can be made in different designs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an information panel on the wrapper strap in a location that was could easily be viewed by the consumer, such as a central location. The location of the information panel would depend on the design of the wrapper strap and how the wrapper strap fit onto the sandwich.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kelly Mahafkey
Examiner
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KEITH HENDRICKS
PRIMARY EXAMINER